Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Performance Measurements and Standards for	**)**	**CC Docket No. 01-318**
Unbundled Network Elements and	**)**	
Interconnection	**)**	

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

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SUMMARY

The NPRM proposes 12 specific measurements and standards for evaluating ILEC performance in provisioning wholesale facilities and services to competitors. The Commission suggests that such national performance measures could advance both the deregulatory and procompetitive goals of the 1996 Act by rationalizing divergent requirements and providing consistent and "bright line" guidance regarding ILEC compliance with the unbundling and interconnection requirements of the Act.

The NPRM's premise that all ILECs are currently subject to a myriad of different requirements between the federal and state jurisdictions is incorrect. While all ILECs are required to comply with the provisions of section 251 of the Act, most of the detailed performance measurements and reporting requirements that currently exist were developed for the large carriers in the course of 271 reviews or as a condition of their merger agreements. These requirements do not generally apply to other carriers. Therefore, the application of the proposed measurements to all ILECs would substantially increase the burdens on the small and mid-sized carriers, which are not currently subject to such measurements and reporting requirements.

CBT relates its experience in provisioning competitive carrier orders to demonstrate the burdens application of national measurements could impose on a mid-sized ILEC. Furthermore, CBT indicates that there is little or no benefit to be realized from the proposed measurements and standards in the case of small and mid-sized ILECs. Rather than impose new regulatory requirements on the small and mid-sized ILECs, the Commission should allow negotiations between the LECs to determine the performance measurements and standards for these ILECs.

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Cincinnati Bell Telephone Company ("CBT"), an independent, mid-sized local exchange carrier submits these comments in response to the Commission's November 19, 2001 Notice of Proposed Rulemaking ("NPRM") in the above captioned proceeding.[1]

I. INTRODUCTION

In this proceeding the Commission is seeking comments on whether it should adopt measurements and standards for evaluating incumbent local exchange carrier ("ILEC") performance in provisioning wholesale facilities and services to competitors. The NPRM proposes 12 specific performance measurements covering pre-ordering, ordering, provisioning, and maintenance and repair. It also seeks comment on how the data, once it is gathered, should be reported and what the appropriate standards should be for each measurement.

The Commission indicates that this proceeding is prompted by its desire to advance both the procompetitive scheme of the 1996 Act and its deregulatory purpose. The Commission

[1] *Performance Measurements and Standards for Unbundled Network Elements and Interconnection,* CC Docket No., 01-318; *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56*; Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147*; Petition of Association for Local Telecommunications Services for Declaratory Ruling,* CC Docket No. 98-147, 96-98, 98-141, Notice of Proposed Rulemaking, FCC 01-331, (rel. Nov. 19, 2001).

believes the deregulatory purpose could be advanced because "national performance measures could rationalize potentially divergent federal requirements in an efficient way."[2] The Commission posits that national performance measures could further the procompetitive purpose of the Act by "provid[ing] the industry with consistent and 'bright line' guidance as to whether an incumbent LEC has provided just, reasonable and nondiscriminatory service."[3]

The NPRM appears to be based upon the premise that all ILECs are currently subject to a myriad of differerent measurements and reporting requirements between the federal and state jurisdictions. However, this premise is incorrect, at least as it applies to CBT. While CBT can only attest to its own situation, CBT suspects that the same is true for most other small or mid-sized ILECs. Although all ILECs have the duty to provide interconnection, access to UNEs, and collocation, at rates, terms and conditions that are just, reasonable, and nondiscriminatory pursuant to the mandates of section 251 of the Act, most of the detailed performance measurements and reporting requirements were developed for the large carriers in the course of 271 proceedings or as a condition of their merger agreements. Generally, the commissions have not required the small and mid-sized carriers to measure and report on their performance. Therefore, application of any of the proposed measurements and reporting requirements to the small and mid-sized ILECs would substantially increase the burdens on these carriers. As a result, contrary to the Commission's hypothesis, the proposal would not advance the deregulatory goal of the 1996 Act as it relates to the small and mid-sized carriers.

Whether national measurements and standards are justified for the large carriers will undoubtedly be the primary focus of most of the comments the Commission receives in response

[2] NPRM at ¶3
[3] Id.

to this NPRM. However, the impact on small and mid-sized carriers must not be overlooked. CBT urges the Commission to analyze the impact on large companies separately from small and mid-sized carriers. In doing so, CBT believes that the evidence will demonstrate that it is unnecessary and inappropriate to impose performance measurements, standards and reporting requirements on small and mid-sized ILECs.

II. PERFORMANCE MEASUREMENTS AND STANDARDS ARE NOT JUSTIFIED FOR SMALL AND MID-SIZED ILECS

Small and mid-sized ILECs that are not already subject to performance measurements mandated by state or federal regulators should not be subject to any new requirements that the Commission may develop in this proceeding. The fact that the states have generally not seen sufficient evidence of service quality problems to warrant applying measurements and standards to the smaller ILECs should signal that there is no need to extend any national requirements to these carriers. An ILEC like CBT should not be required to institute costly systems changes to conform with national measurements, standards and reporting requirements when there is no evidence of any compliance problems. If there is evidence of serious and consistent abuse by a particular ILEC, it is more appropriate to address the problem specifically for that carrier. In most cases, such problems would probably be brought to the attention of state regulators who are best suited to address the alleged abuses in light of the specific interconnection agreement.

In addition to the burden implementation of the proposed requirements would impose on smaller carriers, CBT also questions the benefit of the application of national standards to small and mid-sized carriers. Because of their size and the fact that they may be serving somewhat less lucrative markets, the small and mid-sized ILECs probably have far fewer CLECs and fewer requests for unbundled network elements ("UNEs") and interconnection than the larger ILECs. This makes the value of the proposed standards questionable for these smaller carriers on several

fronts. First, a small or mid-sized carrier may not have enough UNE requests to generate meaningful statistics. For example, if a carrier only provisions five UNEs during the measurement period but misses one due date, it would show a 20 percent missed order measurement. It would be inappropriate to find that this ILEC violated the standard based on one missed date. Second, because the small and mid-sized carriers lack the economies of scale enjoyed by the larger carriers, the cost of developing measurement and reporting systems for CLEC orders could be significant on a per UNE or per CLEC basis.[4] Finally, because they receive so few requests for UNEs, small and mid-sized ILECs may be able to process the CLECs' requests more quickly than the larger carriers. If an ILEC is already processing CLEC orders more quickly than the larger carriers, the application of national standards would not result in an improvement in service, but would only cause ILECs to incur substantial additional costs to implement unnecessary systems.

A. CBT's Experience

CBT operates in a single geographic market that encompasses the Cincinnati MSA.[5] CBT entered into its first interconnection agreement in 1997. It currently has agreements in effect with approximately 40 providers. Most of these agreements provide for both facilities-based and resale service offerings by these providers. Only a few of these competitive service providers are currently purchasing UNEs from CBT.

[4] If measurement and reporting requirements are extended to small and mid-sized ILECs, the carriers should be allowed to recover the cost of implementing the systems necessary to monitor and report such data in their UNE rates.

[5] The Cincinnati MSA includes all or a portion of five southwestern Ohio counties, six northern Kentucky counties and two southeastern Indiana counties.

Although CBT developed electronic interfaces to its operating support systems ("OSS") for use by competitors several years ago, thus far, CLECs have opted to rely on CBT's manual interfaces. To date, the number of UNE orders placed by the CLECs has not warranted the expense entailed in utilizing an electronic interface for either CBT or the CLECs.[6] CBT has been able to timely provision UNE orders in accordance with the performance parameters in its interconnection agreements without the use of electronic interfaces. As this experience demonstrates, for small and mid-sized ILECs, individual negotiation and cooperative implementation decisions between LECs have been more efficient and effective than national mandates would be. The pro-competitive and deregulatory goals of the 1996 Act are better satisifed by promoting solutions that are equitable and cost efficient for both parties than by imposing national standards that cause wasteful expenditures.

Despite the fact CBT and the CLECs operating in the Cincinnati market are currently not using electronic OSS interfaces, CBT understands, based on feedback from the competitive carriers with whom it interacts, that its intervals (i.e., the total time from receipt to completion of an order) are shorter than the intervals the competitive carriers receive from large carriers. If standards are applied to individual sub-process measurements CBT could be penalized for perceived below par performance when in fact its overall performance surpasses that of other carriers.

Evaluating performance on the individual measurements proposed could also be problematic where a smaller ILEC does not have the same detailed processes in place as the

[6] CBT spent approximately $2 million to build an electronic interface which was never tested or used by any CLEC. Nevertheless, that system did not address the measurements and standards contemplated by the Commission in this proceeding, which would require development of entirely new systems to track those matters.

large carriers. For example, in the pre-ordering process the only information CBT records is the Customer Service Record (CSR) request. Although CBT has established a web-based system that CLECs can access directly to determine loop qualification for DSL service, CBT does not track carrier activity on this system.

CBT's negotiated interconnection contracts specify that once an order is received CBT will provide a firm order commitment ("FOC") notice to the CLEC by 5:00 p.m. on the next business day. Because CBT does not provide FOCs for itself, it has no means of measuring order notifier timeliness against its own retail services. However, CBT submits that as long as it is satisfying the terms of its contracts there would be no benefit in requiring it to institute costly systems to establish an FOC for its own orders simply to ensure that it is not discriminating against its CLEC customers.

Furthermore, nondiscriminatory treatment is assured within CBT's provisioning and maintenance and repair systems because CLEC orders are processed via the same systems as CBT's orders. Once a CLEC places an order with CBT it is not differentiated from CBT's own orders. The same is true for maintenance and repair. When the installation or repair is complete, CBT's retail customer or the appropriate CLEC is notified. Therefore, throughout the process, CLEC orders receive the same treatment as orders from CBT's retail customers.[7] CBT would have to develop new systems if it is required to separately track CLEC orders through its ordering, provisioning, and maintenance and repair systems. The per order cost of developing these systems would be significant.

[7] In the case of a UNE, the CLEC is responsible for completing testing since CBT has no control over the CLEC's use of the complete service.

In addition, there would be no real benefit from these changes since several avenues already exist to address the potential of unsatisfactory performance by CBT. Most of CBT's interconnection agreements contain provisions specifying the criteria that trigger the issuance of non-performance service credits. Furthermore, all CLECs have the right to file complaints with state regulators or the Commission if they believe that CBT is violating the terms of its contracts or discriminating in favor of its own retail customers. No carriers have ever suggested to CBT that they perceived a problem, nor have any CLECs filed complaints regarding CBT's performance. With no evidence of problems in CBT's provisioning of service for CLECs, and with existing provisions already in place to address unsatisfactory performance, requiring CBT to develop costly systems to track performance compared to national standards appears to have little or no value.

B. Small and Mid-Sized ILECs Should Be Exempt From New Measuring and Reporting Requirements

While CBT appreciates the Commission's desire to ensure that all markets are open to competitors and that competitors have access to the ILEC's essential facilities without hindrance, the Commission must also consider the impact that its rules have on both CLECs and ILECs. Moreover, in undertaking its analysis the Commission should not make the mistake of assessing the impact on ILECs collectively. As it has done in other instances, the Commission should separately assess the impact of the proposed rules on the large ILECs and small/mid-sized ILECs.[8] Within the 1996 Act Congress specifically recognized that small and mid-sized carriers

[8] *See* for example, *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, FCC 01-305, (rel. November 5, 2001) (*Phase 2 Accounting Order*). In this Order the Commission exempted mid-

are different than the larger carriers.[9] There is clearly precedent for the Commission to examine the impacts on the small and mid-sized carriers separately in this instance.

As the Commission found in the Phase 2 Accounting Order, "mid-sized carriers have more limited resources than the larger companies, and that the cost of regulatory compliance may disproportionately impact these carriers."[10] In the Phase 2 Accounting Order, the Commission relieved the mid-sized carriers of existing reporting requirements in an effort to eliminate unnecessary regulations. In the current proceeding, the need for differentiation for small and mid-sized carriers is even more pronounced, since the proposal would impose new requirements on the small and mid-sized carriers. Failure to exempt the small and mid-sized carriers from any national performance measurements, standards and reporting would be completely contrary to the deregulatory goal of the 1996 Act by increasing regulations for these carriers. Where there is no evidence of noncompliance with the section 251 requirements or allegations of unjust, unreasonable, or discriminatory treatment by these carriers, the imposition of new requirements is unjustified.

An exemption for small and mid-sized carriers from any new measuring and reporting requirements the Commission may develop in this proceeding would not exempt these carriers from the remainder of the Commission's rules related to implementation of section 251 of the Act.[11] Competitive carriers would still retain the right to file complaints against small or mid-

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sized ILECs from the cost allocation manual filing requirements and several of the ARMIS reports.

[9] *See* 47 § U.S.C. 251(f).

[10] Phase 2 Accounting Order at ¶192.

[11] The exemption, suspension, or modification provisions of section 251(f) would continue to apply.

sized carriers that do not comply with section 251 requirements and state commissions can take action against carriers that violate the terms of their agreements with a competitive carrier.

III. CONCLUSION

Imposing new performance measurements, standards and reporting requirements on small and mid-sized ILECs will substantially increase the burdens on these carriers and provide little or no benefit to the CLECs. Rather than national mandates, the Commission should allow negotiations between LECs to determine the performance measurements and standards for the small and mid-sized ILECs. This approach is consistent with the pro-competitive scheme of the 1996 Act and is not contrary to the deregulatory goal of the Act.

Respectfully submitted,

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